

STATE OF MICHIGAN  
COURT OF APPEALS

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In the Matter of KARLEE JANE PODRAZIK,  
Minor.

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THOMAS GAMET and JANET GAMET,

Petitioners-Appellees,

v

KERI TAYLOR,

Respondent-Appellant

and

JAMES PODRAZIK,

Respondent.

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UNPUBLISHED

April 29, 2008

No. 278993

Jackson Circuit Court

Family Division

LC No. 07-005672-NA

Before: Bandstra, P.J., and Fitzgerald and Markey, JJ.

PER CURIAM.

Respondent Keri Taylor appeals as of right from the trial court order terminating her parental rights to the minor child under MCL 712A.19b(3)(f). We affirm.

In March 2005, respondent left the then 14-month-old minor child in the care of petitioners, the child's paternal grandparents, because she was unable to provide a stable home. Shortly after leaving the child, respondent became incarcerated and petitioners were granted the child's guardianship by the Jackson Probate Court. Respondent was incarcerated for the next year. When she was released, she petitioned for termination of the guardianship. The probate court ordered respondent to pay \$50 per month for the child's support and to visit her every Sunday and Tuesday. Three months after her release, respondent violated probation and was re-incarcerated; thereafter the probate court denied her petition to terminate the guardianship. During the three months she was not incarcerated, respondent visited the minor child six times and did not pay any support.

In March 2007, petitioners filed a petition under the Juvenile Code requesting termination of respondent's parental rights at the initial disposition, alleging that respondent had failed to regularly or substantially support, visit, communicate, or contact the minor child for a period of

two years before the filing of the petition. At the preliminary hearing, the trial court noted that the minor child was under the continuing jurisdiction of the Jackson Probate Court. Thereafter, the trial court held a combined adjudication trial and initial disposition. At the close of that hearing, the trial court found “a statutory basis pursuant to MCL 712A.2(B) to terminate [respondent’s] parental rights” and that clear and convincing evidence shows “that a statutory basis exists for terminating [respondent’s] parental rights.”<sup>1</sup>

On appeal, respondent first argues that the trial court erred by failing to determine whether a basis existed permitting it to assume jurisdiction over the minor child and to make findings supporting that decision, and instead proceeding immediately to termination. In order to assume jurisdiction over the child in a termination of parental rights proceeding, the trial court must find that at least one of the statutory grounds for jurisdiction in MCL 712A.2 has been established by a preponderance of the evidence. MCR 3.972(C)(1). This Court reviews the trial court’s findings of fact under the clearly erroneous standard. MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

The family division of the circuit court has sole and exclusive jurisdiction over cases involving juveniles and ancillary jurisdiction over cases involving guardians or conservators. MCL 600.1021(1)(e); MCL 600.1021(2)(a). The trial court in this case possessed ancillary jurisdiction over the minor child’s guardianship matter, however the court was required to base jurisdiction in the child protective proceeding on one of the grounds listed in MCL 712A.2. The evidence adduced at the combined adjudication trial and initial disposition showed by more than a preponderance of the evidence that respondent had failed, from March 16, 2005, when she left the minor child with petitioners, to March 21, 2007, when the petition was filed, to regularly and substantially support the minor child both before and after the probate court’s support order was entered. Respondent admitted she paid no support even though she had a prison job and a small income when released. The evidence also showed that respondent had no communication with the minor child through cards, letters, or gifts during her first year of incarceration. During her three-month release from prison, respondent visited the child six times, during which her relationship to the child was described as more of a playmate than parent. After re-incarceration respondent did not mail letters or gifts for the first five months, thereafter mailing one letter or gift per month from December 2006 to March 2007. Although the trial court misstated that it was terminating respondent’s parental rights under MCL 712A.2(b), it correctly assumed jurisdiction over the child under MCL 712A.2(b)(5).

Respondent next argues that the trial court erred in failing to conduct a dispositional hearing. The trial court conducted the initial disposition in conjunction with the adjudication trial, and respondent did not object to the lack of interval between the two phases of the hearing. Therefore, the issue was not preserved for review. Procedural due process is a constitutional right, and this Court reviews constitutional issues de novo. *Kampf v Kampf*, 237 Mich App 377, 381-382; 603 NW2d 295 (1999). Unpreserved constitutional issues are reviewed for plain error affecting substantial rights. *People v Carines*, 460 Mich 750, 774; 597 NW2d 130 (1999).

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<sup>1</sup> The parental rights of the child’s father, respondent James Podrazik, were also terminated. Podrazik has not appealed that decision.

No plain error occurred. Although the court did not indicate when it transitioned from the adjudication phase to the dispositional phase, the interval of time between the two segments is within the discretion of the trial court. MCR 3.973(C). Here, the original petition requested termination and respondent was provided ample time after the preliminary hearing to request a jury trial if desired, was well aware of the allegations against her, and was provided an opportunity to present any evidence she deemed relevant to preserve her parental rights. A preponderance of the evidence at the combined adjudication and dispositional hearing established that the trial court possessed jurisdiction pursuant to MCL 712A.2(b), and clear and convincing evidence adduced at the hearing established that respondent had failed to regularly or substantially support, visit, contact or communicate with the minor child for two years before the filing of the petition. Respondent's procedural due process right was not adversely affected by the trial court's failure to clearly separate the adjudication and disposition phases of the termination hearing.

Respondent also contends that the trial court clearly erred in finding that statutory ground to terminate her parental rights was established by clear and convincing evidence. MCR 3.977(J); *Miller, supra* at 337. The trial court did not specify upon which of the statutory grounds set forth in MCL 712A.19b(3) it based termination, but the language cited in the petition was that of MCL 712A.19b(3)(f), which is identical to MCL 712A.2(b)(5). As noted above, clear and convincing evidence was presented to support termination on this ground.

Finally, respondent contends that the trial court erred in failing to make a best interests determination. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 352-353; 612 NW2d 407 (2000). However, neither statute nor court rule require a trial court to make specific best interests findings. *In re Gazella*, 264 Mich 668, 677-678; 692 NW2d 708 (2005). Separate best interest evidence was not offered by either party in this proceeding, but the trial court was expected to consider all evidence presented at the hearing to assess the minor child's best interests. The trial court sufficiently commented on the evidence that was offered and, because a court speaks through its orders, in entering the order terminating respondent's parental rights the court necessarily found that termination was not clearly contrary to the child's best interests. *Id.* at 677.

We find no clear error in the trial court's best interests determination given evidence that respondent had not provided care and support or evidenced concern for the child for over two years, had been incarcerated half of the child's life, and had a history of unstable housing. *Trejo, supra* at 356-357. In addition, respondent anticipated being dependent upon her father for employment and housing after her release, and she would be required to demonstrate an ability to remain substance free while out of a structured prison environment. The child deserved stability and permanence that respondent could not provide.

We affirm.

/s/ Richard A. Bandstra  
/s/ E. Thomas Fitzgerald  
/s/ Jane E. Markey